

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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Date:
January 09, 2020

LEGEND:

Taxpayer =
Fund =
Sponsor =
Firm =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Year 1 =
Year 2 =
Year 3 =

Dear :

This ruling responds to a letter dated August 8, 2019, submitted on behalf of Taxpayer. Taxpayer requests an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under § 856(c) of the Internal Revenue Code ("Code") to be treated as a real estate investment trust ("REIT") for the taxable year ended Date 1.

FACTS

Taxpayer was formed as a single member limited liability company on December 1 of Year 1, being wholly owned by its sole member, Fund. Taxpayer did not elect to be classified as an association taxable as a corporation and was therefore a disregarded entity for Year 1. By making a REIT election for its Year 2 taxable year, Taxpayer would be treated as a wholly owned subsidiary of Fund pursuant to § 301.7701-3(c)(1)(v)(B).

Sponsor raises capital, acquires property, and fundraises on behalf of Fund. Sponsor is a real estate investment firm specializing in the investment, development, ownership, and management of commercial and industrial properties in metropolitan areas across the western United States. Sponsor began fundraising in Year 1 for the purpose of adding properties to Taxpayer's portfolio. Sponsor completed its fundraising efforts in Year 3.

Taxpayer intended to elect to be treated as a REIT under § 856 on its Form 1120-REIT, *Tax Return for Real Estate Investment Trusts*, for Taxpayer's taxable year ending Date 1. Taxpayer's limited liability company agreement states Taxpayer "intended to qualify for treatment as a REIT under Section 856 *et seq.* of the Code." The agreement references this intent several times.

Sponsor engaged Firm for all tax compliance matters for Fund. Firm's Managing Director was charged with the overall management of both Fund's and Taxpayer's tax filing preparation. Firm's Senior Manager was also designated as part of Fund's tax preparation team. Because Year 2 was intended to be Taxpayer's first taxable year as a corporation, Taxpayer's filing of Form 7004 to extend the due date of its return was due on Date 2. Senior Manager was under the assumption that Taxpayer's Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, had been filed on Date 3 along with many other extensions for Fund's partnerships and other subsidiaries that were filed.

A few days before Date 4, a Firm employee discovered that Taxpayer's Form 7004 was inadvertently not included with the other extensions filed on Date 3. Firm prepared and filed Form 1120-REIT on Date 5 and subsequently submitted this request to treat its election to be treated as a REIT under § 856(c) as effective for the taxable year ended Date 1.

Taxpayer makes the following additional representations:

1. The request for relief was filed by Taxpayer before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in Taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than Taxpayer would have had if the election had been timely made (taking into account the time value of money).
3. Taxpayer did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 of the Code at the time Taxpayer requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Taxpayer did not choose to not file the election.
5. Taxpayer is not using hindsight in requesting relief. No specific facts have changed since the due date for making the election that makes this election advantageous to Taxpayer.

6. The period of limitations on assessment under § 6501(a) has not expired for Taxpayer for the taxable year in which the election should have been filed, nor for any taxable year(s) that would have been affected by the election had it been timely filed.

Affidavits on behalf of Taxpayer have been provided with the submission as required by § 301.9100-3(e).

LAW AND ANALYSIS

Section 856(c)(1) provides that a corporation, trust, or association shall not be considered a REIT for any taxable year unless it files with its return for the taxable year an election to be a REIT or has made such an election for a previous taxable year, and such election has not been terminated or revoked. Pursuant to § 1.856-2(b) of the Income Tax Regulations, the election shall be made by the trust by computing taxable income as a REIT in its return for the first taxable year for which it desires the election to apply.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election to mean an election whose due date is prescribed by a regulation, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) through (c)(1) sets forth rules that the Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b) provides that a taxpayer is deemed to have acted reasonably and good faith if the taxpayer (i) requests relief under this section before the failure to make the regulatory election is discovered by the Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election. A taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have

known that the professional was not (i) competent to render advice on the regulatory election, or (ii) aware of all relevant facts. A taxpayer will be deemed to have not acted reasonably and in good faith if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed of the required election, but chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c)(1) provides that a reasonable extension of time to make a regulatory election will be granted only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Section 301.9100-3(c)(ii) provides that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

CONCLUSION

Based on the information submitted and the representations made, we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time to elect under § 856(c) to be treated as a REIT for the tax year ended on Date 1.

Accordingly, due to the reasonable extension of time granted to Taxpayer, Taxpayer's Form 1120-REIT filed on Date 5 for Taxpayer's first REIT taxable year is considered a timely election under § 856(c) to be treated as a REIT under subchapter M of the Code effective for its taxable year ended Date 1.

This ruling is limited to the timeliness of the filing of Taxpayer's election under § 856(c). This ruling's application is limited to the facts, representations, Code and regulation sections cited herein. No opinion is expressed with regard to whether Taxpayer otherwise qualifies as a REIT under subchapter M of the Code.

Except as specifically provided otherwise, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Patrick White
Senior Counsel, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:

Copy of this letter
Copy for section 6110 purposes

cc: